

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 4817

DATE COMPLAINT FILED: September 30, 1998

DATE OF NOTIFICATION: October 8, 1998

DATE ACTIVATED: May 28, 1999

STAFF MEMBER: Mark Shonkwiler

COMPLAINANT: Gregory A. Hasty

RESPONDENT(S): North Central Illinois Laborers' District Council Political Action Committee

John S. Evans

Frank Hovar

Mike J. LaHood

John Penn

Vincent Gamba

David McBride

Mike Smith

Laborer's Local 32

Laborers' Local 82

Laborers' Local 109

Laborers' Local 165

Laborers' Local 231

Laborers' Local 287

Laborers' Local 309

Laborers' Local 362

Laborers' Local 393

Laborers' Local 538

Laborers' Local 727

Laborers' Local 751

Laborers' Local 852

Laborers' Local 911

Laborers' Local 996

Laborers' Local 1203

RELEVANT STATUTE(S): 2 U.S.C. § 441b

INTERNAL REPORTS CHECKED: FEC Indices

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter originated as a complaint submitted by Gregory A. Hasty. Complainant alleges that the North Central Illinois Laborers' District Council Political Action Committee ("NCILDC PAC"), various individual members of the NCILDC PAC executive board, and the sixteen Laborers Local unions which are affiliated with the NCILDC PAC may have deducted contributions from the payrolls of individual labor union members without a signed PAC payroll check-off authorization; and may have made "contributions to politicians" out of funds obtained without a signed voluntary contribution authorization card.

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

The Federal Election Campaign Act of 1971, as amended ("the Act") prohibits labor organizations from making contributions from treasury funds in connection with federal elections. 2 U.S.C. § 441b(a). The Act permits labor organizations to establish separate segregated funds for the purpose of making contributions or expenditures in connection with federal elections. 2 U.S.C. § 441b(b)(2). The labor organization or its separate segregated fund may solicit voluntary contributions to the fund from its members and executive and administrative personnel, and their families, and may make twice yearly solicitations of non-members and of executive and administrative personnel and stockholders. See also 11 C.F.R. §§ 114.5(g)(2) and 114.6(b). Funds received and used by a separate segregated fund must have been voluntarily contributed by the members of a labor organization and must not include "dues, fees, or other moneys required as a condition of membership . . ." 2 U.S.C. § 441b(b)(3)(A) and 11 C.F.R. § 114.5.

B. Facts

NCILDC PAC is a state political action committee affiliated with the North Central Illinois Laborers' District Council ("District Council"), which consists of the sixteen Laborers' Local unions named as respondents in this matter. NCILDC PAC is administered by the District Council's Executive Board, which consists of the seven individuals named as respondents in this matter.

NCILDC PAC is not, and has never been, registered with the Federal Election Commission ("the Commission") as a political committee which receives or makes contributions and/or makes expenditures in connection with federal elections.

NCILDC PAC is registered with the Illinois State Board of Elections (Local ID: 204/ State ID 2290), whose records reflect that NCILDC PAC's stated purpose is "To Support And/Or Oppose Various State And/Or Local Political [sic] For Public Office." See Illinois State Board of Elections website at <http://www.elections.state.il.us/>, visited May 24 and June 6, 1999.

According to the financial disclosure reports available on the Illinois State Board of Elections website, NCILDC PAC has filed regular reports as to expenditures and contributions made in connection with Illinois state and local elections since at least 1989. Id.

During 1990-1991, NCILDC PAC was a respondent in the Commission's investigation of MUR 3029. This investigation stemmed from financial transfers that NCILDC PAC had made between 1982 and 1988 to The Springfield Region Laborers' Political League, a political committee registered with the Commission. In an August 20, 1991 conciliation agreement, NCILDC PAC acknowledged that these transfers violated the Act, because some of the funds had been allocated from union dues with no corresponding increase in the amount owed and the

remaining funds had been received from contributors who had not been expressly informed of the federal purpose to which the transferee, The Springfield Region Laborers' Political League, would put their contributions. As part of the conciliation agreement, NCILDC PAC admitted violations of 2 U.S.C. § 441b, § 441b(b)(3)(A) and 11 C.F.R. § 102.6, and agreed to pay a civil penalty in the amount of \$1200.¹

I. The Complaint

The complaint alleges that NCILDC PAC, the members of its executive board (John S. Evans, Frank Hovar, Mike J. LaHood, John Penn, Vincent Gamba, David McBride and Mike Smith), and the sixteen constituent Laborers' Local unions (Laborer's Local 32, Laborers' Local 82, Laborers' Local 109, Laborers' Local 165, Laborers' Local 231, Laborers' Local 287, Laborers' Local 309, Laborers' Local 362, Laborers' Local 393, Laborers' Local 538, Laborers' Local 727, Laborers' Local 751, Laborers' Local 852, Laborers' Local 911, Laborers' Local 996, Laborers' Local 1203) have been:

- A. Deducting Union dues money without the voluntary contribution form to the North Central Illinois Laborers' District Council Political Action Committee Payroll Checkoff [sic] Authorization being signed by laborers. [and]
- B. Making contributions to politicians from the North Central Illinois Laborers' District Council Political Action Committee out of funds obtained without the signed authorization cards.

Complaint at p. 1.

¹ MUR 3029 does not appear to have addressed the question of whether the financial transfers underlying the violation caused NCILDC PAC to become a political committee under the Act. In any event, the conciliation agreement which resolved MUR 3029 did not require NCILDC PAC to register with or report to the Commission as a political committee.

The Complainant identifies two individuals associated with one of the Laborers' Local unions (Laborers' Local 109) who have informed him that NCILDC PAC was deducting moneys from their members' union dues without the proper NCILDC PAC Payroll Check-off Authorization form being signed by the individual workers. Complainant goes on to allege that he "assumes that this procedure is being implemented through [NCILDC PAC's] other fifteen Local Unions." Complaint at p. 2.

The Complaint attaches a sample of the Payroll Check-off Authorization form for Voluntary Contribution to North Central Illinois Laborers' District Council Political Action Committee. This form specifies that authorizing the specified one cent (\$.01) contribution for each working hour to the NCILDC PAC is a voluntary act which is not a condition of union membership, and that the employee has a right to refuse to sign the authorization.

2. The Responses

NCILDC PAC, the members of its executive board, and fifteen of its sixteen constituent Laborers' Local unions filed a joint response to the complaint which asserts that the Commission lacks jurisdiction in this matter, because NCILDC PAC does not make contributions or expenditures in connection with federal elections.

This NCILDC PAC response includes an affidavit from Michael LaHood, the NCILDC PAC treasurer, which states that NCILDC PAC has not made any contributions to the campaigns of candidates for federal office at any time since at least August 25, 1994, the date on which he assumed office. Mr. LaHood further states that:

The PAC's explicit policy to refrain from any participation in federal campaigns was reaffirmed in October 1998. This policy dates, in part, from the experience and settlement of MUR 3029 [in August 1991], in which the FEC found that certain practices of the

PAC in the mid-1980s violated the FECA. Interestingly, MUR 3029 covers a time period during which the PAC was under the leadership of the charging party herein [Complainant Gregory Hasty]. Having learned from the charging party's errors, the current administration of the Council has refrained from any conduct which would result in the PAC making contributions to federal campaigns either directly or indirectly.

Affidavit of Michael LaHood at Paragraph 3(c). Mr. LaHood also states that NCILDC PAC has not made contributions or transfers to the national organization's Laborers' Political League, a "hard money" fund that participates in federal campaigns, since at least the settlement of MUR 3029 in August 1991.²

Laborers' Local 309 filed a separate response to the complaint which provides copies of various correspondence regarding a dispute between Laborers' Local 309 and NCILDC PAC over the amount of contributions received from members of Laborers' Local 309 as a result of the check-off authorization form. Although the Laborers' Local 309 does not attempt to characterize the correspondence attached to its response, it appears that NCILDC PAC had taken the position that the constituent unions had an absolute obligation to contribute at the rate of \$00.01 per member man-hour worked (the rate authorized by the NCILDC Payroll Check-off Authorization).³ In reply to the NCILDC PAC correspondence, Laborers' Local 309 had taken the position that it could contribute the specified amount only for the man-hours worked by members who had signed the NCILDC Payroll Check-off Authorization.

² The NCILDC PAC response states that it does make contributions to the national organization's Laborers' Political League Educational Fund, which is a "soft money" fund that does not contribute to federal candidates.

³ The NCILDC PAC correspondence with Laborers' Local 309 seems to assume that there was 100% local union member participation in the payroll check-off authorization for deducting contributions to NCILDC PAC.

C. Analysis

The threshold issue in this matter is whether NCILDC PAC has made any contributions or expenditures in connection with a federal election that would make it subject to provisions of the Act and its implementing regulations which govern contributions to separate segregated funds affiliated with labor unions. If there is no reason to believe that NCILDC PAC was involved in federal elections, the Commission lacks jurisdiction over the respondents and the alleged dispute set forth in the complaint.

The complaint asserts only that NCILDC PAC has been making "contributions to politicians" using funds obtained without a signed payroll check-off authorization from individual union members. The complaint does not explicitly assert, or provide any information which indicates, that NCILDC PAC has made any contributions or expenditures in connection with a federal election since the 1982-1988 activities dealt with in MUR 3029.

The joint response from NCILDC PAC, its executive board, and fifteen of the sixteen constituent unions, which includes an affidavit from the NCILDC PAC treasurer, asserts that NCILDC PAC has no involvement in federal elections, and has had no direct or indirect involvement in federal elections since at least 1991. Although the response from Laborers' Local 309 might be viewed as raising questions about how NCILDC PAC is implementing the payroll check-off authorization for contributions, it makes no assertion that NCILDC PAC has any involvement in federal elections.

This Office has examined the Commission's contributor indexes, and has found no evidence that any federal political committee has reported receiving a contribution from NCILDC PAC during at least the last three election cycles.

As indicated above, this Office also has verified that NCILDC PAC is registered with, and regularly reports its itemized financial transactions to, the Illinois State Board of Elections. The information available on the Illinois State Board of Elections website appears to generally corroborate the representations made in the NCILDC PAC response.⁴

The NCILDC PAC response identifies the Complainant as its former treasurer, who executed the conciliation agreement in MUR 3029 on behalf of NCILDC PAC. While contributions or transfers to a federal political action committee, such as those that NCILDC PAC made between 1982 and 1988 while the Complainant served as treasurer, would subject NCILDC PAC to the Act and its implementing regulations, there is no indication, or even an allegation, that any such transfers or contributions relating to federal elections have taken place since at least 1991.

As set forth above, there is no information currently available to this Office which indicates that NCILDC PAC has engaged in any activities in connection with a federal election since it settled MUR 3029 in 1991. Notwithstanding any questions that the complaint may raise with regard to the implementation of the payroll check-off authorization for NCILDC PAC contributions, the Act and its implementing regulations do not appear to apply to these activities.⁵

⁴ Although not all of the detailed schedules for the NCILDC PAC reports are currently available on the Illinois State Board of Elections website, the summary information which is available indicates that NCILDC PAC has reported itemized contributions to specific state and local candidates, and is listed as a contributor on the reports filed by various state and local candidates or committees.

⁵ This Office also considered whether the facts presented by this complaint and the responses might justify reporting the complaint and the responses to the Illinois State Board of Elections. A review of Illinois state election law suggests that there is no prohibition on the use of labor union general treasury funds to make contributions in Illinois state and local elections, or corresponding regulations on the procedures for implementing payroll check-off authorizations

Therefore, this Office recommends that the Commission find that there is no reason to believe that North Central Illinois Laborers' District Council Political Action Committee, any of the seven named individual of the NCILDC PAC executive board (John S. Evans, Frank Hovar, Mike J. LaHood, John Penn, Vincent Gamba, David McBride and Mike Smith), and/or the sixteen Laborers' Local unions which participate in the NCILDC PAC (Laborer's Local 32, Laborers' Local 82, Laborers' Local 109, Laborers' Local 165, Laborers' Local 231, Laborers' Local 287, Laborers' Local 309, Laborers' Local 362, Laborers' Local 393, Laborers' Local 538, Laborers' Local 727, Laborers' Local 751, Laborers' Local 852, Laborers' Local 911, Laborers' Local 996 and Laborers' Local 1203) have violated 2 U.S.C. § 441b in connection with the facts alleged in the complaint.

III. RECOMMENDATIONS

1. Find no reason to believe that North Central Illinois Laborers' District Council Political Action Committee violated 2 U.S.C. § 441b.
2. Find no reason to believe that the seven named members of the North Central Illinois Laborers' District Council Political Action Committee Executive Board (John S. Evans, Frank Hovar, Mike J. LaHood, John Penn, Vincent Gamba, David McBride and Mike Smith) violated 2 U.S.C. § 441b.
3. Find no reason to believe that the sixteen named Laborers' Local Unions which constitute the North Central Illinois Laborers' District Council (Laborer's Local 32, Laborers' Local 82, Laborers' Local 109, Laborers' Local 165, Laborers' Local 231, Laborers' Local 287, Laborers' Local 309, Laborers' Local 362, Laborers' Local 393, Laborers' Local 538, Laborers' Local 727, Laborers' Local 751, Laborers' Local 852, Laborers' Local 911, Laborers' Local 996, and Laborers' Local 1203) violated 2 U.S.C. § 441b.

for contributions to a separate segregated fund. See 10 Illinois Compiled Statutes 5/9 *et. seq.* Given that NCILDC PAC does not appear to have violated any Illinois state law, this Office is unaware of any basis for reporting the matter to the Illinois State Board of Elections.

4. Approve the appropriate letter(s).
5. Close the file.

Lawrence M. Noble
General Counsel

7/16/99
Date

BY: 
Lois G. Lerner
Associate General Counsel